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**FEDERAL TRADE COMMISSION**

**16 CFR Parts 3 and 4**

**Revisions to Rules of Practice**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rules.

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**SUMMARY:** The Commission is revising certain of its rules of practice to accommodate changes to the Commission's electronic filing system, to eliminate outdated requirements, and to improve clarity.

**DATES: Effective date:** These rule revisions are effective on **May 12, 2015** and will govern all Commission adjudicatory proceedings that are commenced after that date. They will also govern all Commission adjudicatory proceedings that are pending on **May 12, 2015**, unless otherwise ordered by the Commission.

**FOR FURTHER INFORMATION CONTACT:** Josephine Liu, Attorney, (202) 326-2170, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** The Federal Trade Commission is revising certain rules in parts 3 and 4 of its rules of practice to reflect new features in the Commission's electronic filing system, eliminate outdated requirements for the filing and service of documents, and clarify the applicability of the rules.

Because these rule revisions relate solely to agency procedure and practice, publication for notice and comment is not required under the Administrative Procedure Act. 5 U.S.C. 553(b).<sup>1</sup> These rule revisions are effective on May 12, 2015 and will govern all Commission adjudicatory proceedings that are commenced after that date. They will also govern all Commission adjudicatory proceedings that are pending on **May 12, 2015**, unless otherwise ordered by the Commission.

#### **I. Revisions to Miscellaneous Rules (Part 4)**

*Rule 4.2: Requirements as to form, and filing of documents other than correspondence.*

The Commission is amending Rule 4.2(c) to specify that documents filed before the Commission or an Administrative Law Judge in an adjudicative proceeding under part 3 of the Commission's rules may be filed in either of two ways: in hard copy, or through the Commission's electronic filing system.

Part 3 documents filed in hard copy must include a paper original, one paper copy, and one electronic copy in Adobe portable document format or other format specified by the Secretary. The Commission is eliminating the requirement to provide 12 paper copies for filings before the Commission.

Part 3 documents filed through the electronic filing system must comply with the Secretary's directions for using that system. Additional information about the electronic filing system is available at <https://ftcefile.gov/HomePage.aspx>. Documents labeled "*In Camera*" or "Confidential" may be filed through the electronic filing system, although—as discussed further below—they may not be served through that system. Because the electronic filing system is now configured to accept "*In Camera*" or "Confidential"

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<sup>1</sup> For this reason, the requirements of the Regulatory Flexibility Act are also inapplicable. 5 U.S.C. 601(2), 604(a). Likewise, the amendments do not modify any FTC collections of information within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

documents, the Commission is deleting the existing requirement that “*In Camera*” or “Confidential” documents be filed only in hard copy and be accompanied by an electronic copy on a CD or DVD.

For other documents filed with the Commission that are governed by Rule 4.2(d)—including petitions to quash or limit compulsory process, reports of compliance, and requests to reopen—the Commission is eliminating the existing requirement to provide 12 paper copies and a CD or DVD containing an electronic copy of the document. Instead, such documents must include a paper original, one paper copy, and one electronic copy in Adobe portable document format, unless otherwise directed by the Secretary.

In Rule 4.2(e), the Commission is deleting an outdated exception for briefs filed in support of appeals from initial decisions and an outdated cross-reference to formatting requirements for such briefs under Rule 3.52(e).

In Rule 4.2(f), the Commission is adding an explanation of the acceptable signature methods for documents that are filed electronically.

The Commission is also making other edits throughout Rule 4.2 so that the Rule’s requirements are format-neutral.

*Rule 4.3: Time.*

The Commission is amending Rule 4.3(c) so that, if a document is served electronically, there will be a 1-day extension for any parties required or permitted to respond within a prescribed period after service of the document. As discussed in more detail below, documents can now be filed through the electronically filing system until 11:59 p.m. For documents that are electronically filed and served late at night, it is

unrealistic to expect opposing parties to read the service notification until the next morning. Rule 4.3(c) therefore provides a 1-day extension for responding to electronically served documents. Although the federal courts provide a 3-day extension for responding to electronically served documents, *see* Fed. R. Civ. P. 6(d), the Commission has decided—due to the way that time is computed under the Commission’s rules—that a 1-day extension in Rule 4.3(c) would be more appropriate.

The Commission is amending Rule 4.3(d)’s deadline for timely filing of documents. Although paper documents still must be received in the Office of the Secretary by 5:00 p.m. Eastern Time to be deemed filed that day, documents filed using the electronic filing system will be deemed timely filed as long as they are received by 11:59 p.m. Eastern Time. This change is consistent with Federal Rule of Civil Procedure 6(a)(4), which similarly provides a later deadline for electronic filing as compared to filing by other means.

*Rule 4.4: Service.*

The Commission is amending Rule 4.4(a) to clarify which paragraphs govern which types of documents and to allow the Commission to use electronic delivery to serve certain types of documents in part 3 proceedings. The provision that permits service upon counsel to be deemed service upon the party represented by that counsel—former Rule 4.4(a)(4)—has been moved into a new paragraph so that it is applicable to all documents in Commission proceedings, not just documents served by the Commission. *See* new Rule 4.4(c).

The Commission is amending Rule 4.4(b) to clarify that Rule 4.4(b) is the provision that governs service by complaint counsel, respondents, or third parties in

adjudicative proceedings under part 3. The Commission is also clarifying, in new Rule 4.4(b)(1)(i), that service upon complaint counsel must be effected by serving lead complaint counsel; the Commission is eliminating the existing language that allowed service to be effected by instead serving the Assistant Director in the Bureau of Competition, the Associate Director in the Bureau of Consumer Protection, or the Director of the Regional Office of complaint counsel. In addition, Rule 4.4(b) is being revised to permit service by electronic delivery in accordance with new Rule 4.4(e).

New Rule 4.4(e) governs service by electronic delivery in part 3 proceedings. Specifically, Rule 4.4(e)(1) governs parties who have elected to be served via the Commission's electronic filing system. For such parties, the electronic filing system may be used to serve them with documents labeled "Public," and transmission of the notice of electronic filing provided by the electronic filing system will satisfy the service obligations of the serving party. A document will be deemed served on the date that the notice of electronic filing is transmitted, unless the serving party learns that the notice of electronic filing did not reach the person to be served.

"*In Camera*" or "Confidential" documents may not be served through the electronic filing system. In addition, for confidentiality reasons, the electronic filing system cannot be used to serve third parties. Third parties can use the electronic filing system to file and serve documents, but third parties cannot be served through the system.

Rule 4.4(e)(2) therefore authorizes the Administrative Law Judge and the Secretary to allow other methods of service by electronic delivery, including service by email, in the following circumstances: for service of "*In Camera*" or "Confidential" documents, if the party to be served has not opted into service via the Commission's

electronic filing system, if the document is to be served upon a third party, or if service through the electronic filing system is unavailable for technical reasons. If “*In Camera*” and “Confidential” documents are served by electronic delivery under Rule 4.4(e)(2), they must be encrypted prior to transit or transferred through a secure file transfer protocol.

New Rule 4.4(f) contains language that was previously found in Rule 4.4(b) and that has been moved into a new paragraph for clarity.

## **II. Revisions to Rules of Practice for Adjudicative Proceedings (Part 3)**

### *Rule 3.14: Intervention.*

The Commission is amending Rule 3.14(a) to clarify that motions to intervene in Part 3 proceedings, as well as answers to such motions, must be served in accordance with Rule 4.4(b).

### *Rule 3.83: Procedures for considering applicants.*

The Commission is deleting Rule 3.83(a)’s discussion of the date of filing for an application for an award of fees and expenses under the Equal Access to Justice Act, because Rule 4.3(d) governs the date of filing for documents filed with the Commission.

## **List of Subjects**

### **16 CFR Part 3**

Administrative practice and procedure.

### **16 CFR Part 4**

Administrative practice and procedure, Freedom of information, Public record.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

## **PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS**

### **1. The authority citation for part 3 continues to read as follows:**

AUTHORITY: 15 U.S.C. 46, unless otherwise noted.

### **2. Amend § 3.14 by revising paragraph (a) to read as follows:**

#### **§ 3.14 Intervention.**

(a) Any individual, partnership, unincorporated association, or corporation desiring to intervene in an adjudicative proceeding shall make written application in the form of a motion setting forth the basis therefor. Such application shall be served upon each party to the proceeding in accordance with the provisions of §4.4(b) of this chapter. The answer filed by any party shall be served upon the applicant in accordance with the provisions of §4.4(b). The Administrative Law Judge or the Commission may by order permit the intervention to such extent and upon such terms as are provided by law or as otherwise may be deemed proper.

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### **3. Amend § 3.83 by revising paragraph (a) to read as follows:**

#### **§ 3.83 Procedures for considering applicants.**

(a) *Filing and service of documents.* Any application for an award or other pleading or document related to an application shall be filed and served on all parties as specified in §§4.2 and 4.4(b) of this chapter, except as provided in §3.82(b)(2) for confidential financial information.

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## **PART 4—MISCELLANEOUS RULES**

### **4. The authority citation for part 4 continues to read as follows:**

AUTHORITY: 15 U.S.C. 46, unless otherwise noted.

**5. Amend § 4.2 by revising paragraphs (c), (d), (e), and (f) to read as follows:**

**§ 4.2 Requirements as to form, and filing of documents other than correspondence.**

\* \* \* \* \*

(c) *Paper and electronic copies of filings before the Commission or an Administrative Law Judge in adjudicative proceedings under part 3 of this chapter.* (1) Each document filed in an adjudicative proceeding under part 3, except documents covered by §4.2(a)(1)(i), shall be filed with the Secretary of the Commission, shall be in 12-point font with 1-inch margins, and shall comply with the requirements of §§4.2(b) and (f) and 4.3(d). Documents may be filed with the Office of the Secretary either electronically or in hard copy.

(i) Documents may be filed electronically by using the Office of the Secretary's electronic filing system and complying with the Secretary's directions for using that system. Documents filed electronically shall be in Adobe portable document format or such other format as the Secretary may direct.

(ii) Documents filed in hard copy shall include a paper original, one paper copy, and an electronic copy in Adobe portable document format or such other format as the Secretary shall direct.

(2) If the document is labeled "*In Camera*" or "Confidential", it must include as an attachment either a motion requesting *in camera* or other confidential treatment, in the form prescribed by §3.45 of this chapter, or a copy of a Commission, Administrative Law Judge, or federal court order granting such treatment. The document must also include as a separate attachment a set of only those pages of the document on which the *in camera*



or otherwise confidential material appears and comply with all other requirements of §3.45 and any other applicable rules governing *in camera* treatment. A document labeled “*In Camera*” or “Confidential” may be filed electronically using the electronic filing system.

(3) Sensitive personal information, as defined in §3.45(b) of this chapter, shall not be included in, and must be redacted or omitted from, filings where the filing party determines that such information is not relevant or otherwise necessary for the conduct of the proceeding.

(4) A copy of each document filed in accordance with this section in an adjudicative proceeding under part 3 of this chapter shall be served by the party filing the document or person acting for that party on all other parties pursuant to §4.4, at or before the time the original is filed.

(d) *Other documents filed with the Commission.* (1) Each document filed with the Commission, and not covered by §4.2(a)(1)(i) or (ii) or §4.2(c), shall be filed with the Secretary of the Commission, and shall be clearly and accurately labeled as required by §4.2(b).

(2) Each such document shall be signed and shall comply with the requirements of §4.2(f). Documents filed under this paragraph (d) shall include a paper original, one paper copy, and an electronic copy in Adobe portable document format, unless the Secretary shall otherwise direct.

(3) Each such document labeled “Public” may be placed on the public record of the Commission at the time it is filed.

(4) If such a document is labeled “Confidential”, and it is filed pursuant to

§2.10(a), §2.41(f), or §2.51 of this chapter, it will be rejected for filing pursuant to §4.2(g), and will not stay compliance with any applicable obligation imposed by the Commission or the Commission staff, unless the filer simultaneously files:

(i) An explicit request for confidential treatment that includes the factual and legal basis for the request, identifies the specific portions of the document to be withheld from the public record, provides the name and address of the person(s) who should be notified in the event the Commission determines to disclose some or all of the material labeled “Confidential”, and otherwise conforms to the requirements of §4.9(c); and

(ii) A redacted public version of the document that is clearly labeled “Public”.

(e) *Form.* Paper documents filed with the Secretary of the Commission shall be printed, typewritten, or otherwise processed in permanent form and on good unglazed paper. A motion or other document filed in an adjudicative proceeding under part 3 of this chapter shall contain a caption setting forth the title of the case, the docket number, and a brief descriptive title indicating the purpose of the document.

(f) *Signature.* (1) The original of each document filed shall be signed by an attorney of record for the filing party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association. For documents filed electronically using the Office of the Secretary’s electronic filing system, documents must be signed using a scanned signature image, an “s/” followed by the name of the filer using the electronic filing system, or another signature method as the Secretary may direct.

(2) Signing a document constitutes a representation by the signer that he or she has read it; that to the best of his or her knowledge, information, and belief, the

statements made in it are true; that it is not interposed for delay; and that to the best of his or her knowledge, information, and belief, it complies with the rules in this part. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the document had not been filed.

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**6. Amend § 4.3 by revising paragraphs (c) and (d) to read as follows:**

**§ 4.3 Time.**

\* \* \* \* \*

(c) *Additional time after certain kinds of service.* Whenever a party in an adjudicative proceeding under part 3 of this chapter is required or permitted to do an act within a prescribed period after service of a document upon it and the document is served by first-class mail pursuant to §4.4(a)(2) or (b), 3 days shall be added to the prescribed period. Whenever a party in an adjudicative proceeding under part 3 is required or permitted to do an act within a prescribed period after service of a document upon it and the document is served by electronic delivery pursuant to § 4.4(e), 1 day shall be added to the prescribed period.

(d) *Date of filing.* Documents permitted to be filed using the electronic filing system must be received by 11:59 p.m. Eastern Time to be deemed timely filed that day. All other documents must be received in the Office of the Secretary by 5:00 p.m. Eastern Time to be deemed filed that day, and any such document received after 5:00 p.m. Eastern Time will be deemed filed the following business day.

**7. Revise § 4.4 to read as follows:**

**§ 4.4 Service.**

(a) *By the Commission.* (1) Service of complaints, initial decisions, final orders and other processes of the Commission under 15 U.S.C. 45 may be effected as follows:

(i) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his, her or its residence or principal office or place of business, registered or certified, and mailed; service under this provision is complete upon delivery of the document by the Post Office; or

(ii) *By delivery to an individual.* A copy thereof may be delivered to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or unincorporated association to be served; service under this provision is complete upon delivery as specified herein; or

(iii) *By delivery to an address.* A copy thereof may be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association, or it may be left at the residence of the person or of a member of the partnership or of an executive officer or director of the corporation, or unincorporated association to be served; service under this provision is complete upon delivery as specified herein.

(2) All documents served by the Commission or Administrative Law Judge in adjudicative proceedings under part 3 of this chapter, other than documents governed by paragraph (a)(1) of this section, may be served by personal delivery (including delivery by courier), by electronic delivery in accordance with §4.4(e), or by first-class mail.

Unless otherwise specified in §4.4(e), documents shall be deemed served on the day of personal or electronic delivery or the day of mailing.

(3) All other orders and notices, including subpoenas, orders requiring access, orders to file annual and special reports, and notices of default, may be served by any method reasonably certain to inform the affected person, partnership, corporation or unincorporated association, including any method specified in paragraph (a)(1) of this section, except that civil investigative demands may only be served in the manner provided by section 20(c)(7) of the FTC Act (in the case of service on a partnership, corporation, association, or other legal entity) or section 20(c)(8) of the FTC Act (in the case of a natural person). Service under this provision is complete upon delivery by the Post Office or upon personal delivery (including delivery by courier).

(b) *By parties or third parties in adjudicative proceedings under part 3 of this chapter.* (1) Service of documents by complaint counsel, respondents, or third parties in adjudicative proceedings under part 3 shall be by delivering copies using the following methods.

(i) *Upon complaint counsel.* A copy may be served by personal delivery (including delivery by courier), by electronic delivery in accordance with §4.4(e), or by first-class mail to the lead complaint counsel, with a copy to the Administrative Law Judge.

(ii) *Upon a party other than complaint counsel or upon a third party.* A copy may be served by personal delivery (including delivery by courier), by electronic delivery in accordance with §4.4(e), or by first-class mail, with a copy to the Administrative Law Judge. If the party is an individual or partnership, delivery shall be to such individual or a

member of the partnership; if a corporation or unincorporated association, to an officer or agent authorized to accept service of process therefor. Personal delivery includes handing the document to be served to the individual, partner, officer, or agent; leaving it at his or her office with a person in charge thereof; or, if there is no one in charge or if the office is closed or if the party has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) Unless otherwise specified in §4.4(e), documents served in adjudicative proceedings under part 3 shall be deemed served on the day of personal delivery (including delivery by courier), the day of electronic delivery, or the day of mailing.

(c) *Service upon counsel.* When counsel has appeared in a proceeding on behalf of a party, service upon such counsel of any document, other than a complaint, shall be deemed service upon the party. However, service of those documents specified in paragraph (a)(1) of this section shall be in accordance with paragraphs (a)(1)(i), (ii), and (iii) of this section.

(d) *Proof of service.* In an adjudicative proceeding under part 3, documents presented for filing shall contain proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service must appear on or be affixed to the documents filed.

(e) *Service by electronic delivery in an adjudicative proceeding under part 3 of this chapter--(1) Service through the electronic filing system.* A party may elect, for documents labeled “Public” pursuant to §4.2(b), to be served via the electronic filing system provided by the Office of the Secretary. The electronic filing system cannot be used to serve third parties. For parties that have elected to be served via the electronic

filing system:

(i) Service of documents labeled “Public” pursuant to §4.2(b) may be effected through the electronic filing system;

(ii) Each such party thereby agrees that, for any document served through the electronic filing system, transmission of the notice of electronic filing provided by the electronic filing system shall satisfy the service obligations of the serving party; and

(iii) A document served via the electronic filing system shall be deemed served on the date the notice of electronic filing is transmitted, unless the serving party learns that the notice of electronic filing did not reach the person to be served.

(2) *Service by other methods of electronic delivery.* (i) In the following circumstances, service by other methods of electronic delivery (including service by email) may be effected as the Administrative Law Judge and the Secretary may direct:

(A) The document to be served is labeled “*In Camera*” or “Confidential” pursuant to §4.2(b);

(B) The party to be served has not elected to be served via the electronic filing system;

(C) The document is to be served upon a third party; or

(D) Service under paragraph (e)(1) of this section is unavailable for technical reasons.

(ii) If documents labeled “*In Camera*” or “Confidential” are being served under this paragraph (e)(2), the documents must be encrypted prior to transit or must be transferred through a secure file transfer protocol. Service of a document under this paragraph (e)(2) shall be complete upon transmission by the serving party, unless the

serving party learns that the document did not reach the person to be served.

(f) *Service of process upon the Commission.* Documents served upon the Commission may be served by personal delivery (including delivery by courier) or by first-class mail to the Office of the Secretary of the Commission.

By direction of the Commission.

Donald S. Clark,  
Secretary.  
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